

THIS DEED OF EASEMENT, made and entered into this _____ day of _____, 20____, by _____, and its heirs, successors and assigns, hereinafter referred to as GRANTOR, for the consideration of ONE DOLLAR (\$1.00) and other good and valuable considerations received to its full satisfaction, does hereby grant to the CITY OF AKRON, OHIO, its successors, contractors, licensees and assigns, hereinafter referred to as GRANTEE, an easement and right-of-way for the purpose of guaranteeing the maintenance of each storm water management control as shown and described on the approved Storm Water Pollution Prevention Plan (SWP3) which is on file in the Office of the City Engineer, together with all of the rights and privileges hereinafter enumerated pertaining to said property, being more particularly bounded and described as follows (the "Easement Area"):

[Description of Property]

See Attached Exhibit A which is incorporated herein by reference and made a part hereof as if the same be rewritten herein.

WHEREAS, GRANTOR has submitted for approval by the GRANTEE an SWP3 pursuant to Section 50.80 *~Erosion and Sediment Control – Post-Construction Stormwater Quality~*, of the Code of the City of Akron; and

WHEREAS, Section 50.80 of the Codified Ordinances of the City of Akron requires permanent facilities for storm water detention, the maintenance of which must be guaranteed in perpetuity by the GRANTOR; and

WHEREAS, the GRANTEE and/or its authorized agent has reviewed the proposed SWP3 and has indicated that the Storm Water Management Controls (each Storm Water Management Control referred to herein as a "Control" and collectively the "Controls"), as detailed in the plans prepared by: _____ are adequate provided that the GRANTOR provides the maintenance of each Control;

This easement is granted for the following purposes and subject to the following conditions:

This easement shall exist in perpetuity unless both parties agree upon a discontinuation of the easement.

The GRANTOR and any successors reserve the right to occupy and use each Control for purposes not inconsistent with said easement. Items considered inconsistent with said easement include, but are not limited to, any structure that may impact or cause damage to any Control.

The GRANTEE shall at all times have a right to enter the Easement Area for the purpose of installing, constructing, reconstructing, modifying, altering, maintaining, repairing, operating, monitoring and/or inspecting any Control within the Easement Area, the right of entry to be along the property herein designated;

The GRANTEE shall have the right to set up on the Easement Area such devices necessary to conduct sampling and/or metering of the GRANTOR's stormwater operations or discharges.

1. Maintenance of the Storm Water Management Controls

The GRANTOR agrees that it shall maintain indefinitely each Control in accordance with (i) the maintenance requirements established within the City of Akron Storm Water Management Application and Procedure Manual (the "City Manual"), as such may be modified by the City from time to time, and (ii) the Approved Maintenance Plan, attached as Exhibit B and incorporated herein by reference, in a manner which will permit each Control to perform the purposes for which it was designed and constructed, and in accordance with the standards by which it was designed and constructed, all as shown and described on the approved SWP3 herein above referred to. In the event of any conflict between the City Manual and the Approved Maintenance Plan, the Approved Maintenance Plan shall control.

2. Final Inspection Reports

The GRANTOR agrees that, upon completion of all of the Controls, it will retain at its expense a Professional Engineer registered in Ohio to certify in writing to the GRANTEE within thirty (30) days of completion that each Control is constructed in accordance with the approved plans and specifications.

3. Inspection for Preventive Maintenance

A. The GRANTOR agrees to cause annual inspections to be made of each Control by a Professional Engineer registered in Ohio, retained by the GRANTOR at its expense. The annual inspection requirement begins the calendar year following the completion of the project. The application sheet and the proper forms for completing the annual certification will be available from the GRANTEE.

B. The annual certification shall be completed and submitted by October 1st of each year.

C. The GRANTOR agrees to perform promptly all needed maintenance reported by the Inspector.

4. Rights of the GRANTEE in the Event of Default by the GRANTOR

In the event of any default or failure by the GRANTOR in the performance of any of the covenants and warranties pertaining to the maintenance of any Control, in accordance with the terms and conditions hereof, after notice in writing given to the GRANTOR by the GRANTEE, the GRANTEE shall have the right to enter upon the properties owned by the GRANTOR and, for the account of the GRANTOR, maintain or repair such Control. All costs incurred in the performance of the work, furnishing of materials and advertising of notice shall be paid by the GRANTEE and billed to the GRANTOR. If the GRANTOR fails, neglects or refuses to pay the total cost within thirty (30) days after the costs are billed, then the GRANTEE shall certify the amount so paid by the GRANTEE, including all necessary charges to the County Fiscal Officer. The County Fiscal Officer shall enter the amount as an assessment upon the Property described in Exhibit A.

5. Indemnification of GRANTEE

The GRANTOR hereby agrees that it shall hold harmless and indemnify the GRANTEE from and against all liability, losses, claims, suits, demands, costs and expenses arising from, or out of, default or failure by the GRANTOR to maintain each Control or arising from, or out of, the construction, operation, repair or maintenance of each Control. However, nothing stated herein shall be construed as to make the GRANTOR responsible for the negligence of the GRANTEE.

6. No Public Rights

The parties hereto expressly do not intend by execution of this Agreement to create in the public, or any member thereof, any rights as a third party beneficiary or to authorize anyone not a party hereto to maintain a suit for any damages pursuant to the terms or provisions of this Agreement.

7. Covenants Running With the Land

GRANTOR hereby warrants that GRANTOR has full power and authority to grant this Easement subject to the prior rights of holders of existing liens and encumbrances which GRANTOR warrants shall not adversely affect GRANTEE'S right to exercise the privileges herein granted, and GRANTOR agrees to forever defend the Easement and rights granted herein unto GRANTEE and GRANTEE'S successors and assigns, against every person or entity lawfully claiming an interest in the Easement or any part of it, except as noted above.

The provisions of this Easement shall be deemed to be covenants, running with the land, binding upon and inuring to the benefit of the parties hereto, their respective heirs, executors, administrators, lessees, invitees, successors and assigns unless otherwise stated herein.

To ensure that, if the property is sold, transferred, or leased to another person or entity, the sales, transfer, or lease agreement is conditioned so that the recipient assumes full responsibility for all conditions of this easement, the deed transfer or any lease agreements shall include the details of these requirements and information about each Control such as the following: a) location of each Control; b) how and when to perform the necessary inspections and maintenance and c) how to send proof of inspection and maintenance to the GRANTEE.

To have and to hold the said Easement with all the rights incident thereto, unto the GRANTEE forever, and the GRANTOR covenants with the said GRANTEE that at and until the ensealing of these presents said GRANTOR is well seized of the above described premises as a good and indefeasible estate in fee simple, and has good right to grant the easements, rights and privileges in the manner and form above set forth.

In witness whereof, _____ by its duly authorized officers, has hereunto set its hand this _____ day of _____, A.D. 20____.

SIGNATURE:

State of Ohio)
) SS
Summit County)

Before me, a Notary Public in and for said County, personally appeared _____, _____ for _____, who acknowledged the signing of the foregoing instrument to be his voluntary act and deed, and the voluntary act and deed of said _____ and that he is fully authorized to execute this instrument on behalf of said _____.

In witness whereof, I have hereto set my hand and official seal this _____ day of _____, A.D. 20____.

NOTARY PUBLIC

ACCEPTANCE OF EASEMENT

The City of Akron accepts and agrees to the terms and provisions of the within easement.

CITY OF AKRON

John O. Moore, Director
Department of Public Service

State of Ohio)
) SS
Summit County)

Before me, a Notary Public in and for said County, personally appeared John O. Moore, Director of Public Service for the City of Akron who acknowledged the signing of the foregoing instrument to be his voluntary act and deed, and the voluntary act and deed of said municipal corporation and that he is fully authorized to execute this instrument on behalf of said municipal corporation.

In witness whereof, I have hereto set my hand and official seal this _____ day of _____, A.D. 20_____.

NOTARY PUBLIC

**APPROVED AS TO FORM
AND CORRECTNESS:**

Cheri B. Cunningham
Director of Law

This Instrument
Prepared by:
The City of Akron

1609406 v_01 \ 016756.0006